

No. 14/13/87-6Lab./826.— In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s T. C. Haryana, Chandigarh *versus* Khajan Singh.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 256 of 90

Between

THE MANAGEMENT M/S TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.
2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD

Versus

THE WORKMAN NAMELY SH. KHAJAN SINGH, S/O SH. CHANDAN SINGH, C/O SH. BHIM SINGH
YADAV, 65-A, CHAWALA COLONY, 100 FEET ROAD, BALLABGARH.

Present :

Sh. B. S. Yadav, AR, for the workman.
Sh. Suraj Parkash, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred to as 'the Act') the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication,—*vide* Haryana Govt. Endorsement No. 30329—35 dated, 30th July, 1990.

"Whether the services of Khajan Singh were terminated or he had left the job himself having been absent from duties. The relief to which is he entitled as result thereof ?"

2. The case of the workman is that he was appointed as conductor in April 1960. He was promoted as Inspector in the year 1970 on account of his good work. He was transferred to Faridabad Depot in the year 1983. In the end of the year, 1985 he sustained mental shock when his son-in-law made an attempt to kill his daughter. His son-in-law then wanted to get rid of his daughter by seeking divorce. This act of his son-in-law gave another mental blow to him and he became a mental case. He could not attend to his duty till 27th October, 1987. He has been submitting applications for grant of leave to his immediate superior, Sh. M. C. Lamba, Traffic Manager, Palwal, but he was not aware of the action taken on those applications. He was neither issued any charge sheet nor any domestic enquiry was held during the period of his absence. He reported for duty after recovering mental depression but he was not allowed to resume duty despite the fact that he had explained his circumstances. He was served with show cause notice and he submitted detailed reply. The respondent did not consider his reply properly. He was not granted an opportunity of personal hearing. His services were illegally terminated,—*vide* order dated 16th December 1988. He is thus, entitled to be reinstated into service with full back wages.

3. The respondent No. 2 submitted written statement dated 26th August, 1992 stating therein that the workman had been absent from duty w.e.f. 5th November, 1985. He was repeatedly asked to resume duty. He had come to the office only on 18th February, 1986 and submitted joining report but again had left the office. He did not turn up to resume duty thereafter. A charge-sheet was issued to him but did not submit reply. The enquiry officer was appointed to enquire into the charges. The enquiry officer conducted the enquiry and found him guilty of the charge of absence from duty. He was there after served with show cause notice for showing cause as to why his services would not be terminated. He submitted reply to the show cause notice. The impugned order terminating his services was then passed. The action taken by respondents is legal and valid. Consequently, the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 10th March, 1993 reasserting his previous averments and denying the averments of the respondents.

5. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the domestic enquiry conducted is fair & proper ? If so, to what effect ?
- (2) As per terms of reference.
- (3) Relief.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

8. MW-2 Sh. J. D. Narwal deposed that the respondent No. 1 had appointed him as enquiry officer through letter Ex. M-3 to enquiry into the charges against the present workman contained in charge-sheet Ex. M-1. He had conducted the enquiry proceedings as contained in Ex. M-4 and had submitted his enquiry report Ex. M-5. On the basis of this statement it has been submitted on behalf of the respondents that it stands proved that the domestic enquiry conducted by MW-2, J. D. Narwal is fair and proper.

9. On the other hand, the workman stated in the court that neither any enquiry officer was appointed nor the enquiry was held regarding the charges contained in the charge-sheet, dated 21st August, 1986 received by him through Ex. M-2. He further stated that he had not received copy of the charge-sheet, dated 25th August, 1986. Sh. J. D. Narwal enquiry officer had once summoned him in his office as he was working as General Manager at that time and had got his signature on some blank paper which was Ex. M-14. In the end, he stated that he was neither supplied with the copy of Ex. M-4 nor of the findings as contained in Ex. M-5.

10. On the basis of aforesaid statement, it has been submitted on behalf of the workman that he was given charge-sheet dated 21st August, 1986 through receipt Ex. M-2. The perusal of letter dated 16th January, 1987 Ex. M-3 shows that General Manager, Haryana Roadways, Faridabad was appointed as enquiry officer to enquire into the charges contained in the charge-sheet, dated 25th August, 1986. MW-2 J. D. Narwal also admitted this fact. It is thus, clear that the enquiry officer was not appointed to enquire into the charges contained in the charge-sheet dated 21st August, 1986 given to the workman through receipt Ex. M-2. The workman has clearly stated on oath that he was not supplied with copy of the charge-sheet dated 25th August, 1986 about which MW-2 J. D. Narwal had conducted the enquiry. It is thus, established that the enquiry got conducted by the respondent was not fair and proper.

11. The plea taken by the workman is not tenable. The workman was issued charge-sheet through Memo No. 27923/AE-3/EII dated 25th August, 1986, Ex. M-1. The No. i. e. 27923/AE-3/EII and the date i.e. 25th August, 1986 put on this charge-sheet are not properly legible. (The date has been put by me in ink today before the parties). This fact created some confusion and so it was recorded in the receipt Ex. M-2 that the workman was being supplied charge-sheet bearing No. 27923/AE-3, dated 21st August, 1986. The workman himself admitted in his cross-examination that he had received charge-sheet Ex. M-1 on 13th September, 1986 through receipt Ex. M-2. The despatch No. i. e. 27923/E-3 is the same on the charge-sheet Ex. M-1 as well as on the receipt Ex. M-2. Apart from this, the workman has not placed on record a copy of any other charge-sheet dated 21st August, 1986 allegedly received by him through receipt dated 13th September, 1986 Ex. M-2. There is no dispute that the enquiry officer was appointed to enquire into the charges as contained in the charge-sheet dated 25th August, 1986 and he conducted the enquiry about the same. The perusal of the enquiry proceedings shows that only one witness M. C. Lamba, Traffic Manager had appeared before the enquiry officer and had stated that the workman had been absent from duty without any information or reason since 5th November, 1985 and then he had made the report to the higher officers. No question was asked by the workman from this witness despite the fact that he was given an opportunity to cross-examine him. The statement of the workman was also recorded by the enquiry officer and he stated before him that he had been absent from duty w.e.f. 5th November, 1985 due to his continuous illness. The enquiry officer had asked the workman as to whether he wanted to examine any person in his defence or wanted to produce medical certificate but he declines and appended his signatures on the statement. The workman admitted in his own statement made in the court that he had once been called by the enquiry officer. He also admitted that he had appended his signatures on the document Ex. M-4. All these facts clearly prove that the enquiry officer had conducted a fair and proper enquiry into the charges contained in the charge-sheet dated 25th August, 1986. Issue No. 1 is thus, decided in favour of the respondents and against the workman.

Issue No. 2 :

11. MW-1 Narendra Kumar deposed that the workman was issued charge-sheet Ex. M-1 and it was received by him through receipt Ex. M-2. The workman had not submitted any reply to the charge-sheet and so the enquiry officer was appointed through letter Ex. M-3. The enquiry officer had conducted the enquiry proceedings as contained in Ex. M-5 and submitted the enquiry report Ex. M-5. Then show cause notice Ex. M-7 was given to the workman through receipt Ex. M-8. Thereafter the services of the workman were terminated through letter Ex. M-7. On the basis of this statement, it has been submitted that the impugned order terminating the services of the workman is legal and valid. On the other hand, the AR of the workman reiterated the position discussed in Issue No. 1 above that the workman was given charge-sheet

dated 21st August, 1986 through receipt Ex. M-2 but the enquiry officer was appointed to enquiry into the charges contained in the charge-sheet dated 25th August, 1986. The enquiry officer also mentioned in his report Ex. M-5 that he had conducted the enquiry into the charges contained in the charge-sheet dated 25th August, 1986. It is however, mentioned in the impugned order Ex. M-7 through which the services of the workman were terminated that he was issued charge-sheet *vide* Order No. 27923/AE-3/EII, dated 21st August, 1986. It is thus, clear that the impugned order terminating the services of the workman does not relate to the charge-sheet dated 21st August, 1986 received by the workman or to the charge-sheet dated 25th August, 1986 about which the enquiry officer had conducted the enquiry. Consequently the impugned order is illegal and unjustified.

13. The plea put forward by Sh. B. S. Yadav, AR, for the workman cannot be accepted. As discussed in Issue No. 1 above the workman was served charge-sheet through Memo No. 27923/AE-3/EII dated 25th August, 1986. The only allegation against the workman had been that he had been absent from duty unauthorisedly and wilfully w.c.f. 5th November, 1985 upto date. The enquiry officer had conducted the enquiry pertaining to this allegation as is evident from his report Ex. M-5. Similar is the position of the letter Ex. M-7 that the charge as well as the Memo No. i.e. 27923/E-3 is mentioned in it. The date i.e., 21st August, 1988 appears to be typographical error. That being so, it can not be taken that the services of the workman were terminated illegally. Issue No. 2 is decided in favour of the respondents and against the workman.

14. In view of my findings on Issue No. 1 & 2 above, it is held that the respondent No. 2 has legally and validly terminated the services of the workman and that he had not left the service himself having remained absent from duty. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA,

The 3rd October, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 3028, dated 24th October, 1994.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab/828.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of Secretary, H.S.E.B. Panchkula (Ambala) *versus* Ramesh Chand.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, HISAR

Reference No 599 of 90

Date of receipt : 7-3-1989.

Date of decision : 6-10-1994.

SHRI RAMESH CHAND, S/O CHHOTU RAM, VILLAGE MODI, TEH. DADRI,
DISTRICT BHIWANI

.. Applicant

versus

1. SECRETARY, HARYANA STATE ELECTRICITY BOARD, PANCHKULA,
DISTRICT AMBALA.

2. EXECUTIVE ENGINEER, HSEB, OP. DIVISION, DADRI (BHIWANI).

3. SDO, HSEB OP. DIVISION CH. DADRI DISTRICT BHIWANI

.. Respondents.

Present :

Shri B. R. Reprics, for the workman.

Shri Ganga Ram, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') the Governor of Haryana referred the following dispute between Ramesh Chand and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Bwn/128-87/9534-41, dated 1st March, 1989 :—

Whether termination of services of Ramesh Chand, is justified and in order? If not, to what relief is he entitled?

2. According to the workman, he was appointed as labourer in the Op. Division Charkhi Dadri under Haryana State Electricity Board on daily wages on 15th November, 1979 and he worked as such, continuously upto 31st March, 1982. Whereafter, he was removed from service due to shortage of work, but he was not given any notice nor paid any retrenchment compensation, as required under the Act. The workman has, therefore, claimed that the termination of his service, amounted to "retrenchment" as defined in Section 2(00) of the Act. It was also stated that after terminating his services, fresh appointments were made and in this way, the management had contravened the provisions of Section 25-H of the Act. The workman, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, while admitted that the workman was employed as daily wage worker in November, 1979 and that he worked till March, 1982, pleaded that the workman had not completed 240 days service in any 12 calendar months, preceding the date of termination and it was, therefore, claimed by the management that it was not necessary for them to comply with the provisions of Section 25-F of the Act. It was also denied that any junior to the workman was also denied that any junior to the workman was retained in service, although it was admitted that as and when daily wages labour was required, the same was engaged in accordance with law. Several preliminary objections were also raised, as they are reflected in the following issues framed on 16th January, 1991 by my learned predecessor :—

- (1) As per terms of reference.
- (2) Whether the reference is bad in law and delayed one?
- (3) Whether the workman remained gainfully employed, as alleged?
- (4) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri B. R. Rapria, Authorised Representative of the workman and Shri Ganga Ram, Authorised Representative of the management and have gone through the case file. My findings on the above issues, are as under :—

Issue No. :

5. Ramesh Chand appeared as WW-1 and has deposed that he had worked as daily wage worker from 2nd November, 1979 to 31st March, 1982 and has also deposed that he has met with an accident on 16th February, 1982, when he was on duty and has added that the management has paid him wages upto 31st March, 1982. He further claimed that after he moved from the accidental injuries after 6-7 months of treatment, he reported to the management for duty, but he was not allowed to join and has added that he made several representations in this connection. He adduced in evidence, the copies of these representations as Ex. W-1 and Ex W-4 to Ex. W-11. He also adduced in evidence copy of certificate Ex. W-2 and list of persons as Ex. W-3 who allegedly have been employed by the management after termination of his services.

6. On behalf of the management, Shiv Kumar SDO, MW-1 and Ram Kumar, Head Clerk, MW-2 were examined. Both of them have deposed unanimously that the workman had rendered service for 171 days in all from November, 1979 to March, 1982, as detailed in Ex M-1. Ram Kumar, MW-2 has also stated that no accident took place on 16th February, 1982 and 11KV, Double Circuit Line and both these witnesses stated that the copies of representations Ex. W-4 to Ex. W-11 were not received in their

office. Shiv Kumar, MW-1 has further stated that copy of application Ex. W-1 was also not in their record. The management also placed on file the photo copies of the muster rolls for the relevant period as Ex. M-3.

7. A perusal of the statement containing details of working days of Ramesh Chand, Ex.M-1 would show that the workman had worked in all for 171 days during the entire period of his service i.e. from November, 1979 to March, 1982 and he has worked for 108 days only during the preceding 12 months, prior to 1st April, 1982. As the workman had not completed 240 days service in preceding 12 months, the provisions of Section 25-F were not attracted in this case and the management was not required to serve him with notice and to pay him retrenchment compensation before terminating his services.

8. Much emphasis has been laid by Shri B. R. Rapria, Authorised Representative of the workman on the plea that the workman met with an accident on 16th February, 1982, while on duty. He further contended that the workman remained under treatment for 6-7 months thereafter and according to him, this period of 6-7 months should be treated as duty period and so computed, the workman would be deemed to have worked for more than 240 days during the preceding 12 months. According to Ramesh Chand, he was taken to Civil Hospital on 16th February, 1982, but thereafter he was left at his home. He further contended that thereafter his parents did not get him admitted in Civil Hospital and he remained under treatment of private doctor. However, the workman has neither produced any record of civil hospital, Dadri to prove his treatment on 16th February, 1982, nor he adduced any record to prove subsequent treatment by private doctor. The fact remains that the workman had given not produced any private doctor in support of his case and as such, the *ipse-dixit* of the workman that he remained under treatment for 6-7 months can not be accepted. So far as the representations, the copies of which are on file, are concerned, since their despatch or receipt by the management, is not proved, they are of no assistance to the workman.

9. So far as the authority of H. D. Singh *versus* Reserve Bank of India & Others, 1985-Lab. I.C. 1733, cited by Shri B. R. Rapria Authorised Representative of the workman is concerned, the same does not help the workman, because in this case, the workman was proved to have worked for 202 days during the preceding 12 months and as the relevant record was not produced by the management, benefit of Sundays and holidays was given to the workman. In our case, the workman, as per record, has worked for 108 days during the preceding 12 months, prior to 1st April, 1982 and no assistance can thus be drawn by the workman from the above noted authority.

10. In the light of discussion above, I hold that the termination of services of the workman was justified and in order and the workman is not entitled to any relief. The issue is decided accordingly, in favour of the management.

Issues No. 2 and 3 :

11. Both these issues were not pressed by the Authorised Representative of the management and were conceded to by him during arguments. Both these issues are, therefore, decided against the management.

Issue No. 4 —Relief :

12. In view of my findings on the above issues, the termination of services of the workman is held justified and in order and he is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

The 6th October, 1994.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2240, dated the 11th October, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.